

NTSB Order No. EA-4919

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 15th day of October, 2001

Docket SM-4323

Petitioner and the Administrator have appealed from the oral initial decision of Administrative Law Judge William R. Mullins, issued on November 18, 1999, following an evidentiary hearing.¹ The law judge denied petitioner's attempt to require the FAA to reissue his medical certificate. Petitioner's appeal is denied; the Administrator's is granted, in part.

7392

Petitioner has been attempting to reinstate his medical certificate since it was revoked about 7 years ago, following his 1993 approximately 3-week stay at a psychiatric hospital. There, he was treated for paranoia and delusions, diagnosed with bipolar disorder and medicated with, among other things, Lithium and Haldol.² His commitment was initially involuntary, and sought by his mother. The record indicates that, over the years since then, he has had a stable and productive life, working as an aircraft mechanic. He has seen numerous doctors in an attempt to prove himself mentally fit to regain his medical certificate. Those doctors have given various reports on his condition and various interpretations of the records of his hospital stay and subsequent testing. Not all the reports have been favorable. Mr. Lee argues before us that the initial episode that led to his hospitalization was misreported, that he was misdiagnosed, and that, in effect, there was nothing ever wrong with him at that time other than being tired and having a fever.

The Administrator has declined to reissue a medical certificate based on conclusions of Federal Air Surgeon John Jordan that petitioner did not qualify for reasons set forth in 14 C.F.R. 67.107, 207, and 307, and 67.113, 213, and 313.³ Dr.

² Petitioner's medical certificate was revoked a few years earlier for use of Prozac. It was later reinstated when petitioner established he was no longer taking that medication.

³ Sections 67.107, 207, and 307 provide, as pertinent, that a medical certificate will not be issued to someone who has an established medical history or clinical diagnosis of a psychosis, including bipolar disorder, or has some other "personality
(continued...)

Jordan cited a history of bipolar disorder and psychosis, as well as evidence of a cognitive deficit. Joint Exhibit at 1, letter dated August 31, 1998. At the hearing, the Administrator withdrew the bipolar disorder claim. (All the mental health professionals who saw Mr. Lee after he was released from the hospital had difficulty with, or explicitly disagreed with, that diagnosis.) Nevertheless, there remains considerable, and substantial, evidence in the record that Mr. Lee is not medically fit to hold a certificate.

First, the record establishes that, while a diagnosis of "psychosis, not otherwise specified" may not be a useful treatment tool, it is a recognized term that is used by the medical profession when the underlying cause of the psychosis has not been determined. Transcript (Tr.) at 450. This diagnosis, therefore, can stand on its own despite the withdrawal of the bipolar disorder claim. And, under the wording of the regulation, one psychotic episode, no matter how brief, is enough to preclude issuing or reissuing a medical certificate.

(continued...)

disorder, neurosis, or mental condition that the Federal Air Surgeon finds makes the person unable to safely perform the duties or exercise the privileges of an airman certificate or may reasonably be expected, for the maximum duration of the certificate to make the person unable to safely perform those duties or exercise those privileges." Sections 67.113, 213, and 313(b) provide generally that a certificate holder may not have any "other organic, functional, or structural disease, defect, or limitation" or be "taking any medication or treatment that the Federal Air Surgeon...finds makes the person unable to safely perform the duties or exercise the privileges of the airman certificate."

The Administrator's medical witnesses clearly explained how petitioner's behavior was psychotic -- that is, he lost contact with reality. Tr. at 266. Hospital records that note behavior while he was committed repeatedly demonstrate delusional and paranoid actions. Thus, even were we to ignore much of the evidence of pre-commitment behavior, the record supports a finding that petitioner had a psychotic event.⁴ Petitioner's expert witness's alternative theories for petitioner's pre-commitment behavior were seriously undermined by the Administrator's expert witnesses. See, e.g., Tr. at 271-272 and 305. Further, he acknowledged that he could not diagnose the 1993 incident, not having known petitioner at that time, and it is clear from the testimony that an individual can be symptom free and function normally for many years, despite having had a psychotic episode. Tr. at 157.

Second, even if we had rejected a finding that petitioner had had a psychotic episode, he has not rebutted the medical evidence and testimony that he has serious cognitive deficits that could threaten aviation safety. This is a separate and

⁴ There is considerable record evidence identifying a number of problematic behaviors on petitioner's part that led to his involuntary commitment. Petitioner testified that he could not recall them. Petitioner's mother disavowed all the statements, including those written and notarized, attributed to her that explain why he was committed. The law judge specifically noted difficulty with Mrs. Lee's credibility. In any case, there is no dispute that, immediately prior to his commitment, Mr. Lee's mother woke up one morning to find him in their garage crouched down between the two cars with a gun, shells on the ground. She had no idea how long he had been there.

independent disqualifying condition. Although he has worked hard through the years and has submitted the recommendations of various aviation professionals, including a pilot examiner, the medical and airman certificates are two different matters with different standards. The results of petitioner's medical testing indicate that his performance is "impaired" and sub par in a number of areas. See testimony of Drs. Mayo and Ray, especially Tr. at 437-458. In fact, his performance on certain of the cognition tests deteriorated from 1993 to 1997, the time of the last battery. Tr. at 458. In 1997, he performed marginally on tasks of visual scanning, memory, problem solving, verbal logic, abstract reasoning, and visual-spatial organization. Evaluation by Dr. Arthur Tarbox, Joint Exhibit at 339-344. These items, in particular, are critical to an airman's appropriate functioning and decision making. This medical evidence -- which was not rebutted by petitioner⁵ -- must be given greater weight than petitioner's generalized evidence about his ability to function in society and master certain aviation activities and tests.

Turning to the Administrator's appeal, we must decide whether the law judge's order of clarification was adequate to address the issues before us. The Administrator would have us modify his findings to include a specific affirmation of the Administrator's denial based on cognitive deficit. As noted above, we have supplemented the law judge's findings in this

⁵ Petitioner's medical expert was not qualified to comment on any of the cognition tests or their results.

regard and have found that the record demonstrates a cognitive deficit that is prohibited under the regulations. This satisfies 49 U.S.C. 44703(c). As the Administrator noted throughout the hearing, the burden here is on petitioner, not the Administrator. There is no legal necessity for a specific finding that the Administrator's denial was supported by the evidence. It is enough to find that petitioner failed in his burden of proving otherwise.

ACCORDINGLY, IT IS ORDERED THAT:

1. Petitioner's appeal is denied; and
2. The Administrator's appeal is granted to the extent set forth in this decision.

CARMODY, Vice Chairman, and HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order. BLAKEY, Chairman, did not participate.